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PX NJ CONCESSIONS, LLC,  
  
*Plaintiff,*  
  
v.  
  
TRUMP TAJ MAHAL ASSOCIATES, LLC  
*d/b/a* TRUMP TAJ MAHAL CASINO  
RESORT, ICAHN ENTERPRISES, L.P., AND  
TRUMP ENTERTAINMENT RESORTS, INC.  
*a/k/a* TRUMP HOTELS & CASINO RESORTS,  
INC.,  
  
*Defendants.*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ATLANTIC COUNTY

Docket No.: ATL-L-233-17

Civil Action

**COMPLAINT**

Plaintiff, PX NJ CONCESSIONS, LLC (“Panda Express,” “Tenant” or “Plaintiff”), by way of Complaint against Defendants, TRUMP TAJ MAHAL ASSOCIATES, LLC *d/b/a* TRUMP TAJ MAHAL CASINO RESORT, a New Jersey limited liability corporation (“Trump Taj Mahal” or “Landlord”), ICAHN ENTERPRISES, L.P., a Delaware limited partnership (“Icahn Enterprises”), and TRUMP ENTERTAINMENT RESORTS, INC. *a/k/a* TRUMP HOTELS & CASINO RESORTS, INC., a New Jersey corporation (“Trump Entertainment”) (collectively with Landlord and Icahn Industries, “Defendants”), alleges as follows:

## NATURE OF THE ACTION

1. In September, 2011, Plaintiff, as a licensee authorized to operate a Panda Express restaurant, and Defendant, Trump Taj Mahal, entered into that certain Agreement of Lease for space in the Trump Taj Mahal Hotel and Casino (the "Hotel and Casino") for the construction and operation of a Panda Express (the "Lease"). (A true and correct copy of the Lease is attached hereto as **Exhibit A**).

2. For over five years, Plaintiff operated a Panda Express restaurant in the Hotel and Casino, and otherwise abided by the terms of the Lease. Nevertheless, Defendants abruptly closed the Hotel and Casino and prevented Plaintiff from continuing to operate its restaurant, even though five years remained under the Lease.

3. Defendants' closure of the Hotel and Casino is a clear breach of the Lease resulting in Plaintiff's inability to operate and generate revenue. As a result, Plaintiff has been damaged entitling Plaintiff to compensation for its loss of business, unamortized construction and improvement costs of the leased space, unreturned security deposit, lost profits through the entire term of the Lease and attorneys' fees. Accordingly, Plaintiff brings this action for: (i) multiple breaches of the express terms of the commercial lease; (ii) unjust enrichment; and (iii) constructive eviction.

4. In addition, Plaintiff also seeks to pierce the corporate veil of Landlord's parent companies. Landlord, at the direction of Icahn Enterprises and Trump Entertainment, sought to terminate collective bargaining agreements with Trump Taj Mahal's local union. The closure of the Hotel and Casino not only forced hundreds of union employees out of work, but prevented Plaintiff from operating the restaurant as anticipated and intended under the Lease, and resulted in the layoff of twelve Panda Express employees who worked at the Hotel and Casino.

5. Landlord closed the Hotel and Casino as a result of, *inter alia*, the failure of Icahn Enterprises and Trump Entertainment to adequately capitalize the Hotel and Casino following their acquisition thereof. Ultimately (and as they have admitted in the press), Defendants closed the Hotel and Casino for the improper purpose of breaking the local union. For these reasons and as described in more detail below, Plaintiff seeks to pierce the corporate veil and hold Icahn Enterprises and Trump Entertainment responsible for Plaintiff's damages.

### **THE PARTIES**

6. Plaintiff, PX NJ CONCESSIONS, LLC is a limited liability corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1683 Walnut Grove Avenue, Rosemead, California 91770.

7. Upon information and belief, Defendant, TRUMP TAJ MAHAL ASSOCIATES, LLC *d/b/a* TRUMP TAJ MAHAL CASINO RESORT is a limited liability corporation organized and existing under the State of New Jersey, with its principal place of business located at 1000 Boardwalk at Virginia Avenue, Atlantic City, New Jersey 08401.

8. Upon information and belief, Defendant, ICAHN ENTERPRISES, L.P. is a limited partnership organized and existing under the laws of the State of Delaware, with its principal place of business located at 767 Fifth Avenue, New York City, New York 10153.

9. Upon information and belief, Defendant, TRUMP ENTERTAINMENT RESORTS, INC. *a/k/a* TRUMP HOTELS & CASINO RESORTS, INC. is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 1000 Boardwalk at Virginia Avenue, Atlantic City, New Jersey 08401.

## **JURISDICTION AND VENUE**

10. This Court has general subject matter jurisdiction over this Complaint pursuant to N.J. Const. Art. VI, § 3, ¶ 2.

11. Venue is properly placed in this County pursuant to R. 4:3-2(a) because this action affects damages related to real property located within this County, and because performance under the Lease was to take place in this County.

12. The Lease also includes a forum selection clause stating that all claims and disputes arising out of the Lease must be filed in this County. (*See Lease, Ex. A, § 53.*)

## **FACTUAL ALLEGATIONS**

### **I. THE LEASE**

13. On or around September 9, 2011, Defendant, Trump Taj Mahal, as landlord, and Plaintiff, as tenant, entered into the Lease, for approximately one thousand two hundred twenty-five (1,225) square feet of rentable space in the Hotel and Casino, located at 1000 Boardwalk, Atlantic City, New Jersey 08401 (the "Premises"). The expressed purpose of the Lease was for Plaintiff's operation of a Panda Express restaurant. (*Lease, Ex. A, p. 5.*)

14. The initial term of the Lease is ten (10) years from the commencement date of December 24, 2011, and includes two five-year renewal options. Under the original term, the Lease expires on December 24, 2021, and may be extended by Plaintiff through December 24, 2031 (the "Lease Term"). (*Lease, Ex. A, § 2.*)

15. Under the Lease, Plaintiff's duties include: paying rent, maintaining insurance, maintaining appropriate licenses, constructing improvements to the Premises and operating a Panda Express restaurant. (*Lease, Ex. A, §§ 4, 5, 7, 10, 20.*)

16. Section 38 of the Lease expressly requires Trump Taj Mahal to ensure Plaintiff's quiet enjoyment of the Premises, whereby Plaintiff is entitled to "peaceably and quietly have, hold and enjoy the Premises during the Lease Term." (Lease, Ex. A, p. 40.)

17. It was both Plaintiff's and Trump Taj Mahal's expectation that the Hotel and Casino would operate through the Lease Term. In fact, the Lease contemplates that both the Panda Express restaurant and the Hotel and Casino would continuously operate each and every day from at least 10:00 AM until 8:00 PM, Monday through Thursday, and would remain open until Midnight on Fridays, Saturdays and holidays. The restaurant was also to remain open during additional hours where the Hotel and Casino and other outlets located in the Hotel and Casino would be open for business. (Lease, Ex. A, § 10.)

18. Accordingly, Trump Taj Mahal's stated intent and promise to operate a hotel and casino was a material consideration, which formed the bargained for benefit relied upon by Plaintiff in contracting with Trump Taj Mahal to open a restaurant at the Premises.

19. In reliance upon this promise and expectation, on or around December 15, 2011, Plaintiff made a \$10,500 security deposit to Trump Taj Mahal (Lease, Ex. A, §47), and invested over \$820,000 for improvements to the Premises, including construction to the leasehold space and the purchase and installation of certain immovable fixtures. (Lease §5, Ex. A, pp. 11-12.)

20. Plaintiff made these expenditures with the reasonable expectation that Trump Taj Mahal would continue its accommodation and gaming operations at the Hotel and Casino throughout the Lease Term. As described in detail below, Trump Taj Mahal abruptly closed – with five years remaining on the Lease Term – on October 10, 2016, causing Plaintiff significant damages.

**II. AS A RESULT OF THE TRUMP ENTERTAINMENT BANKRUPTCY CASE, ICAHN ENTERPRISES: (1) OBTAINS OWNERSHIP OF, AND (2) OPERATES AND MANAGES TRUMP TAJ MAHAL.**

21. Following the bankruptcy of Trump Entertainment, and its sale during said proceeding in February 2016, Carl Icahn, founder and majority shareholder of Icahn Enterprises, became the primary owner, through the other Defendants, of the Hotel and Casino.

22. Prior to his acquisition of Trump Entertainment, upon information and belief, Carl Icahn was also the primary lender to Trump Entertainment and the Hotel and Casino. Upon information and belief, as of July 16, 2010, Icahn Enterprises and its affiliated entities were a first lien lender to Trump Entertainment in the amount of \$286 million.

23. Trump Taj Mahal is a wholly-owned subsidiary of Trump Entertainment. *See* Icahn Enterprises 10-Q public filing for the Quarterly Period ending September 30, 2016.

24. On or around September 9, 2014, Trump Entertainment filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Bankruptcy Petition No. 14-12103-KG (the “Bankruptcy Case”).

25. On or around November 14, 2014, Trump Entertainment filed its Second Amended Plan in the Bankruptcy Case. In that Plan, Trump Entertainment announced that it would shut down the Hotel and Casino unless its union, UNITE HERE Local 54 (the “Union”), ceased pursuing its appeal of an order which terminated the Union’s contract and effectively canceled the Hotel and Casino employee’s health insurance and pension coverage.

26. Upon information and belief, on or around December 18, 2014, two days before the anticipated closure of the Hotel and Casino, the Union’s contract dealing with healthcare and pension benefits was under continuing negotiation.

27. At this time, on or around December 18, 2014, Carl Icahn and/or Icahn Enterprises committed \$20 million in financing for the Trump Taj Mahal to prevent such closure,

and committed to invest up to \$100 million into the Hotel and Casino, if “and only if” the Union granted certain concessions.

28. Upon information and belief, Defendants were not only active in the negotiations with the Union, but remained in control of the Hotel and Casino, and were ultimately responsible for the decision to close the Hotel and Casino in October 2016.

29. On or around February 26, 2016, the Bankruptcy Court confirmed the Third Amended Joint Plan of Reorganization, whereby Trump Entertainment exited the Bankruptcy Case as a wholly-owned subsidiary of Icahn Enterprises, which was the sole holder of Trump Entertainment’s senior secured debt. At that time, Trump Entertainment’s Third Amended Joint Plan of Reorganization became effective, and Trump Entertainment, Trump Taj Mahal and the Hotel and Casino were “officially” assets and subsidiaries of Icahn Enterprises.

30. As part of the Bankruptcy Case, Trump Taj Mahal assumed the Lease pursuant to Bankruptcy Code section 365(a). See 11 U.S.C. § 365(a).

31. Such assumption resulted in Trump Taj Mahal – and by extension, its parent entities, Icahn Enterprises and Trump Entertainment – securing all of the benefits of the Lease. However, in return, Trump Taj Mahal was required to assume all the burdens of the Lease, including the performance of all of Landlord’s ongoing obligations under the Lease for the remainder of the Lease Term.

32. Had they desired to exit their business relationship with Plaintiff, Defendants could have sought – as part of Trump Taj Mahal’s Bankruptcy Case – to reject the Lease. Landlord clearly chose to continue to be bound by the Lease despite its ability to reject the Lease as part of its Bankruptcy Case.

**III. AS PART OF DEFENDANTS' SCHEME TO BREAK LANDLORD'S UNION, TRUMP TAJ MAHAL WAS UNDERCAPITALIZED BY ICAHN ENTERPRISES.**

33. According to the Icahn Q3 Report, Icahn Enterprises conducts its gaming segment through its wholly-owned subsidiary, Trump Entertainment, as well as through its majority ownership of Tropicana Entertainment, Inc. ("Tropicana").

34. According to Tropicana's 10-Q public filing for the Quarterly Period ending September 30, 2016, Tropicana (through its wholly-owned subsidiary, TEI Management Services LLC) entered into a management agreement with Trump Taj Mahal.

35. Since the completion of the Bankruptcy reorganization in 2016, Icahn Enterprises has become the wholly-owning parent corporation of Trump Entertainment, which has always been the wholly-owning parent corporation of Trump Taj Mahal, and Icahn Enterprises currently manages Trump Entertainment through its subsidiary, Tropicana.

36. Upon information and belief, Defendants Icahn Enterprises and Trump Entertainment continue to manage and direct the business and operations of Trump Taj Mahal.

***A. Since Icahn Enterprises' Purchase Of Trump Entertainment, Icahn Enterprises Has Failed To Properly Capitalize Trump Taj Mahal.***

37. When it acquired Trump Entertainment and Trump Taj Mahal, Icahn Enterprises knew, or should have known, that the Hotel and Casino needed a substantial injection of cash in order to fund ongoing operations.

38. Indeed, as described above and upon information and belief, Carl Icahn (speaking on behalf of Icahn Enterprises) committed to investing \$100 million in cash into the Hotel and Casino to allow it to continue to operate and grow its business.

39. Moreover, prior to the acquisition by Icahn Enterprises, Trump Entertainment and Trump Taj Mahal clearly acknowledged that the Hotel and Casino needed substantial additional funds in order to continue operations post-bankruptcy.



40. Despite the promise to invest up to \$100 million in funding to keep the Hotel and Casino operational, Icahn Enterprises did not adequately capitalize Trump Taj Mahal.

41. As a result, Icahn Enterprises' gaming operations experienced an \$89 million net loss for the three month segment ending on September 30, 2016, according to its Q3 Report.

42. The lack of additional funding from Icahn Enterprises into Trump Entertainment, and ultimately Trump Taj Mahal, prevented the struggling Hotel and Casino from being able to continue its daily operations, as evidenced from its net losses, and eventual closing a mere eight (8) months after Icahn Enterprises' purchase of Trump Entertainment.

43. Carl Icahn and Icahn Enterprises failed to adequately capitalize Trump Taj Mahal and provide it with sufficient assets to fund its operations. As noted recently by Don Guardian, the mayor of Atlantic City: "Taj Mahal was the crown jewel before the Borgata in Atlantic City. It's a great facility, but it didn't get that \$100 million face lift that the other properties got in Atlantic City and so you knew it when you walked in there. But it's a great property; I really hope that Mr. Icahn, if he doesn't want to build, sells it...and lets someone else come in and do it."

44. Despite Trump Taj Mahal's clear financial issues, Icahn Enterprises' holding company, Icahn Enterprises Holdings, L.P., had cash and cash equivalents of \$192 million as of September 30, 2016, based on its Q3 Report. Thus, Carl Icahn and Icahn Enterprises had sufficient cash reserves to adequately capitalize Trump Taj Mahal.

***B. Instead Of Negotiating With The Union, Defendants Developed A Scheme To Break The Union By Closing The Hotel And Casino To Cut Further Losses.***

45. Rather than inject additional funds into the Hotel and Casino (which was needed for the reasons discussed above), Defendants demanded Union concessions.

46. On July 1, 2016, employees of the Hotel and Casino who were members of the Union went on strike, and remained on strike, until the closing of the Hotel and Casino.

47. In August 2016, Carl Icahn announced that he was shutting down the Hotel and Casino and that he had made his "final offer" to the Union members. Upon information and belief, his final offer included, among other things, the restoration of health care to the Union employees, but at a lower level than what workers at Atlantic City's other seven casinos received.

48. As a result, Carl Icahn and Icahn Enterprises never offered the Union a reasonable compromise in order to maintain the operations of the Hotel and Casino.

49. In correspondence to the Union, he also stated that: "It is one thing to fund losses when a path to profitability exists. ... But to burn tens of millions of dollars when there is no hope is just foolish. The strike has been the latest and final nail."

50. Finally, in early August 2016, Carl Icahn announced that he would shut down the Hotel and Casino at some time after Labor Day, and, on August 5, 2016, Trump Taj Mahal filed required notices with the Department of Labor announcing that the exact date of closure for the Hotel and Casino would be October 10, 2016.

51. Defendants were very public about the anticipated closing of the Hotel and Casino, which caused a material interference with Plaintiff's daily business operations, amounting to an inhibition to use the Premises as intended by the Lease.

52. In fact, starting in September 2016, Plaintiff's employees began to quit, based on the anticipated closure of the Hotel and Casino.

53. Additionally, as early as September 4, 2016, due to the Union strike and public threats to shut down the Hotel and Casino, there was a significant decline in customer foot traffic

at the Premises. Eventually, all of Plaintiff's ten associates either quit or were otherwise relocated.

#### **IV. TRUMP TAJ MAHAL PROPOSES NON-MARKET LEASE AMENDMENT.**

54. On or around August 31, 2016, and in anticipation of closing the Hotel and Casino, Trump Taj Mahal (at the direction of, upon information and belief, Defendants) sent Plaintiff a proposed lease amendment (the "Proposed Lease Amendment") related to the "cessation of operations at the Taj Mahal." A true and correct copy of the Proposed Lease Amendment is attached hereto as **Exhibit B ("Lease Amend.")**.

55. The Proposed Lease Amendment indicated that the Hotel and Casino would be ceasing operations on October 10, 2016, and would no longer be operating. The Proposed Lease Amendment indicated that Plaintiff's "obligations to do business at the Taj Mahal pursuant to the Lease and to pay Rent pursuant to the Lease shall be suspended," and that Plaintiff would no longer be permitted to access or use the Premises. (Lease Amend., Ex. B, ¶¶ 1, 3.)

56. Despite the non-access to the Premises, the Proposed Lease Amendment attempted to bind Plaintiff to the remaining terms of the Lease, and indicated that: "[t]he Term of the Lease shall remain as set forth in the Lease and continue during the time period that the Taj Mahal is non-operational." (Lease Amend., Ex. B, ¶ 9.)

57. Plaintiff did not agree to the terms of the Proposed Lease Amendment, and did not sign the Proposed Lease Amendment.

58. In fact, Plaintiff informed Trump Taj Mahal that it considered the Proposed Lease Amendment an anticipatory repudiation of the Lease because the public threats to close the Hotel and Casino made it impossible to maintain the business operations contemplated by the Lease.

59. In light of Plaintiff's growing concerns, Plaintiff demanded adequate assurances from Trump Taj Mahal that the Hotel and Casino would remain open through and after October 10, 2016, but Trump Taj Mahal provided no such assurances.

**V. DEFENDANTS CLOSE THE HOTEL AND CASINO AND BREACH THE LEASE**

60. On or around October 10, 2016, Trump Taj Mahal unilaterally closed the Hotel and Casino due to its failed negotiations with the Union.

61. Based on the financial information contained in Icahn Enterprises' publicly-filed documents, as well as the representations made to Plaintiff in the Proposed Lease Amendment, it is clear that Icahn Enterprises, through its ownership of Trump Entertainment, devised a plan to break the Union by closing the Hotel and Casino.

62. It is clear that Defendants simply chose to shut down the Hotel and Casino instead of negotiating further with the Union.

63. By unilaterally choosing to shut down the Hotel and Casino in an effort to break the Union (despite the obligation and ability to do otherwise), Defendants materially breached the Lease.

64. For instance, Carl Icahn stated that the parties were unable to find "a workable path forward that would not have required funding additional investments and losses in excess of \$100 million over the next year."

65. However, upon information and belief, in reality, Defendants determined that waiting out the Union would be more profitable than negotiating healthcare and pension benefits and maintaining the Hotel and Casino in operating condition.

66. In fact, President-elect Donald Trump (former owner of Trump Taj Mahal) stated to the Associated Press, "I felt they should have been able to make a deal... It's hard to believe they weren't able to make a deal."

67. Defendants used their ownership and control of Trump Taj Mahal for the evident purpose of breaking the Union.

68. Here, it is clear that the decision to close the Hotel and Casino was a conscious choice by Defendants, in an effort to break the Union, wholly under their reasonable control.

**VI. PLAINTIFF COMPLIED WITH THE TERMS OF THE LEASE AND IS ENTITLED TO ADEQUATE COMPENSATION FOR DAMAGES SUSTAINED BY DEFENDANTS' BREACH.**

69. Since the commencement of the Lease, Plaintiff has paid rent to Trump Taj Mahal in accordance with the Lease, through the closure of the Hotel and Casino on October 10, 2016.

70. The Lease states that "in the event the casino located in the Hotel is closed for business for a period in excess of three (3) consecutive days, Basic Rent shall be abated from the date of such closure until such time as the casino is reopened for business to the public." (Lease, Ex. A, § 6.2.)

71. Here, the Hotel and Casino has been, and remains closed for business since October 10, 2016. As such, Plaintiff's duty to pay rent terminated on October 10, 2016, and will not recommence unless the Hotel and Casino is reopened to the public.

72. Defendants' decision to close the Hotel and Casino has, and continues, to prevent Plaintiff from operating the restaurant in an open and active casino, as anticipated at the time of entering into the Lease.

73. In fact, during the negotiation of the Lease, Defendants recognized that Trump Taj Mahal's failure to continuously maintain its operation as a hotel and casino "will, in all likelihood, cause an adverse impact on the business to be conducted by the Tenant at the Premise," and acknowledged the unrecoverable damages that closure of the Hotel and Casino would create. (Lease, Ex. A, § 6.1.)

74. Acknowledging the validity and application of this provision to this particular situation in the Proposed Lease Agreement, Defendants made it clear that Plaintiff would no longer be responsible for rent starting on October 9, 2016. (Proposed Lease Amendment, Ex. B, ¶ 6.)

75. Defendants have also breached the Lease by withholding certain meal vouchers from Plaintiff in the amount of \$8,630.77.

76. In accordance with Section 30 of the Lease, these meal vouchers were issued by Trump Taj Mahal to its Hotel and Casino guests, and redeemed by the Hotel and Casino's guests at Plaintiff's restaurant. (Lease, Ex. A, p. 37.)

77. To date, Trump Taj Mahal has not paid for vouchers that were accepted by Plaintiff from September 27, 2016 through October 9, 2016, and submitted for payment.

78. Plaintiff continues to fulfill its duties and obligations under the Lease to date, including, but not limited to, maintenance of the Premises and insurance. (Lease, Ex. A, § 11, 20). Accordingly, and pursuant to the terms of the Lease, Plaintiff is entitled to "all costs, expenses and reasonable attorneys' fees" that it has and will incur in enforcing the terms of this Lease. (Lease, Ex. A, § 54.)

79. Additionally, Plaintiff has mitigated its damages in good faith, by actively seeking options for comparable restaurant locations, and by seeking options to sell its equipment.

80. However, it would take up to two (2) years to seek out a comparable, new location, and to construct it into fully operating condition.

81. On or around November 4, 2016, realizing that Defendants had breached the Lease, Defendants offered to make arrangements to allow Plaintiff's patrons – not that any remained at this point – to safely and securely park their vehicles, and enter and exit the

Premises. A true and correct copy of the November 4, 2016 Correspondence is attached hereto as **Exhibit C.**

82. However, operating a restaurant in an *abandoned* Hotel and Casino is not the business operation contemplated by Plaintiff and Defendants, and as evidenced by the terms of the Lease.

83. Furthermore, having to navigate through an abandoned Hotel and Casino to reach a Panda Express restaurant would create additional liability and risk for Plaintiff, its employees, and its customers.

84. In fact, the Lease itself states that Trump Taj Mahal's failure to continuously maintain its operation as a casino "will, in all likelihood, cause an adverse impact on the business to be conducted by the Tenant at the Premise." (Lease, Ex. A, § 6.1.)

85. Additionally, continued press releases and interviews by Defendants' representatives regarding the anticipated and eventual closure of the Hotel and Casino significantly deterred Plaintiff's customers, and prevented Plaintiff's customers from patronizing the Panda Express restaurant at the Hotel and Casino, as contemplated by the Lease.

86. Accordingly, allowing Plaintiff access to the Premises will not fully compensate Plaintiff, nor will it put Plaintiff back into the position it would have been in had Defendants not breached the Lease.

**COUNT I**  
**BREACH OF CONTRACT – COVENANT OF QUIET ENJOYMENT**  
**(against Defendant, Trump Taj Mahal)**

87. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 86 of this Complaint.

88. Under the terms of the Lease, Trump Taj Mahal expressly owed Plaintiff the covenant of quiet enjoyment, and was obligated to allow Plaintiff to “peaceably and quietly have, hold and enjoy the Premises during the Lease Term.” (Lease, Ex. A, § 38.)

89. Trump Taj Mahal breached the Lease and the covenant of quiet enjoyment because it prevented Plaintiff from peaceably and quietly having, holding and enjoying the Premises during the Lease Term by unilaterally closing the Hotel and Casino, based on conditions under its control.

90. Despite Plaintiff’s full compliance with its obligations under the Lease, Plaintiff has been irreparably damaged because of Trump Taj Mahal’s breach of the Lease.

91. Due to the closing of the Hotel and Casino, Defendants have materially and effectively prohibited Plaintiff from operating its restaurant at the Premises since October 10, 2016, and throughout the remaining term of the Lease as intended and expected.

92. Due to Defendants’ threats and eventual closing of the Hotel and Casino on October 10, 2016, the majority of Plaintiff’s employees have quit.

93. Due to Defendants’ threats and eventual closing of the Hotel and Casino, Plaintiff has been unable to operate its restaurant at the Premises, which has resulted in lost profits throughout the entirety of the Lease, in an amount to be determined at trial.

94. Lost profits, through the entire Lease term, were reasonably foreseeable at the time Defendants’ unilaterally chose to close the Hotel and Casino and breach the Lease, and were contemplated by the parties, as evidenced by the acknowledgement that cessation of operations as a casino will cause unrecoverable damages to Plaintiff. (Lease, Ex. A, § 6.1.)

95. As required by the §5 of the Lease, Defendants knew that Plaintiff would expend substantial sums for improvement of the Premises and it was reasonably foreseeable at the time



Trump Taj Mahal breached the Lease that Defendants would have to reimburse Plaintiff for its unamortized improvements to the Premises.

96. Under the Lease, the Plaintiff should have, at a minimum, ten (10) years to recoup these costs, however, since Trump Taj Mahal's breach of the Lease and Lease Term, Plaintiff has no way to recoup these costs.

97. Assessing Plaintiff's lost profits and the cost of its unamortized improvements, and requiring Defendants to pay for these damages incurred by Plaintiff will compensate Plaintiff for Trump Taj Mahal's breach, and will put Plaintiff back into the position it would have been, had the Trump Taj Mahal performed under the Lease.

98. Plaintiff has acted in good faith and has attempted to mitigate its damages by seeking to sell its equipment and diligently seeking comparable locations for a new Panda Express restaurant location.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Trump Taj Mahal as to Count I, as follows:

- A. Declaring that Trump Taj Mahal breached the Lease;
- B. For an award of all lost profits through the entire Lease Term, in an amount to be determined at trial;
- C. For an award of Plaintiff's unamortized improvements to the Premises, in an amount to be determined at trial;
- D. For an award of prejudgment interest, in an amount to be determined at trial;
- E. For an award of Plaintiff's legal costs and attorneys' fees incurred in connection with this matter pursuant to Section 54 of the Lease; and
- F. For such other and further relief as the Court deems just and appropriate.

**COUNT II**  
**BREACH OF CONTRACT – LEASE TERM**  
**(against Defendant, Trump Taj Mahal)**

99. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 98 of this Complaint.

100. Under the express terms of the Lease, Plaintiff was entitled to operate its Panda Express business on the Premises for at least ten (10) years from the commencement date of December 24, 2011.

101. Trump Taj Mahal breached the ten (10) year Lease Term, and renewal option periods by prematurely closing the Hotel and Casino and prohibiting Plaintiff from operating its restaurant as contemplated by the Lease. (Lease, Ex. A, § 2.)

102. Despite Plaintiff's full compliance with its obligations under the Lease, Plaintiff has been irreparably damaged because of Trump Taj Mahal's breach of the Lease.

103. Due to the closing of the Hotel and Casino, Defendants have materially and effectively prohibited Plaintiff from operating its restaurant at the Premises since October 10, 2016, and throughout the remaining term of the Lease as intended and expected.

104. Due to Defendants' threats and eventual closing of the Hotel and Casino on October 10, 2016, the majority of Plaintiff's employees have quit.

105. Due to Defendants' threats and eventual closing of the Hotel and Casino, Plaintiff has been unable to operate its restaurant at the Premises, resulting in lost profits throughout the entirety of the Lease in an amount to be determined at trial.

106. Lost profits through the end of the Lease term were reasonably foreseeable at the time Defendants' unilaterally chose to close the Hotel and Casino and breach the Lease, and were contemplated by the parties, as evidenced by the acknowledgement that cessation of operations as a casino will cause unrecoverable damages to Plaintiff. (Lease, Ex. A, § 6.1.)

107. It was also reasonably foreseeable at the time Trump Taj Mahal breached the Lease that Plaintiff would have to be reimbursed for its unamortized improvements to the Premises. Under the Lease, the Plaintiff should have, at a minimum, ten (10) years to recoup these costs, however, since Trump Taj Mahal's breach of the Lease and Lease Term, Plaintiff has no way to recoup these costs.

108. Assessing Plaintiff's lost profits and the cost of its unamortized improvements, and requiring Defendants to pay for these damages incurred by Plaintiff will compensate Plaintiff for Trump Taj Mahal's breach, and will put Plaintiff back into the position it would have been, had Trump Taj Mahal fully performed under the Lease.

109. Plaintiff has acted in good faith and has attempted to mitigate its damages by seeking to sell its equipment and diligently seeking comparable locations for a new Panda Express restaurant location.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Trump Taj Mahal as to Count II, as follows:

- A. Declaring that Trump Taj Mahal breached the Lease;
- B. For an award of all lost profits through the entire Lease Term, in an amount to be determined at trial;
- C. For an award of Plaintiff's unamortized improvements to the Premises, in an amount to be determined at trial;
- D. For an award of prejudgment interest, in an amount to be determined at trial;
- E. For an award of Plaintiff's legal costs and attorneys' fees incurred in connection with this matter pursuant to Section 54 of the Lease; and
- F. For such other and further relief as the Court deems just and appropriate.

**COUNT III**  
**BREACH OF CONTRACT – COMPLIMENTARY DISCOUNTS**  
**(against Defendant, Trump Taj Mahal)**

110. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 109 of this Complaint.

111. Section 30 of the Lease (the “Complimentary Discounts Provision”) states:

Tenant shall invoice Landlord at the end of each month for complimentary sales to Landlord's authorized guests which invoice shall reflect the name of the guest, the name of the person authorizing the complimentary and the date, reference number and retail price of the sale. **Landlord shall pay Tenant the amount of such invoice within fifteen (15) days of receipt thereof** subject to the twenty percent (20%) discount. Complimentary dollars shall be redeemed at a 2:1 ratio of complimentary dollars to real dollars.

(Lease, Ex. A, p. 37) (emphasis added).

112. Immediately following the closure on October 10, 2016, Plaintiff submitted an invoice to Trump Taj Mahal for \$8,630.77, representing vouchers collected from September 27, 2016 through October 9, 2016.

113. To date, Plaintiff has not received the reimbursement for the unpaid meal vouchers in the amount of \$8,630.77.

114. Accordingly, Trump Taj Mahal has breached the Complimentary Discounts Provision of the Lease by its failure to reimburse Plaintiff within fifteen (15) days of submission of invoices, and Plaintiff has been damaged in the amount of at least \$8,630.77 in unpaid meal vouchers.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Trump Taj Mahal as to Count III, as follows:

A. Declaring that Trump Taj Mahal breached the Lease;

- B. For an award of \$8,630.77 which represents unpaid and owed meal vouchers through October 9, 2016;
- C. For an award of prejudgment interest, in an amount to be determined at trial;
- D. For an award of Plaintiff's legal costs and attorneys' fees incurred in connection with this matter pursuant to Section 54 of the Lease; and
- E. For such other and further relief as the Court deems just and appropriate.

**COUNT IV**  
**UNJUST ENRICHMENT (against Defendant, Trump Taj Mahal)**

115. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 114 of this Complaint.

116. Pleading in the alternative to Counts I & II, pursuant to R. 4:5-6, Plaintiff alleges unjust enrichment against Trump Taj Mahal, and seeks its unamortized construction and improvement costs which it has incurred while building up the Premises, in accordance with Section 5 of the Lease. (Lease, Ex. A, pp. 11-12.)

117. Trump Taj Mahal has been unjustly enriched in receiving improvements to the Premises, all of which were undertaken and paid for by Plaintiff as required by the Lease. (Lease, Ex. A, §5.)

118. Plaintiff has conferred a benefit on Trump Taj Mahal, and the failure of Trump Taj Mahal to remunerate Plaintiff for this valued benefit of an improved leasehold space has enriched Trump Taj Mahal beyond its contractual rights stated in the Lease.

119. Allowing Trump Taj Mahal to retain such improvements, without remunerating Plaintiff for the value of these benefits would be unjust and unconscionable.

120. Defendants' deliberate and conscious choice to close the Hotel and Casino halfway through the Lease Term has stripped Plaintiff of its ability to recoup the costs of the construction and improvements to the Premises.

121. The unamortized costs of the construction and improvements are definite, and can be calculated with reasonable certainty. Plaintiff is entitled to a return of the costs of the construction and improvements on the Premises.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Trump Taj Mahal as to Count IV, as follows:

- A. For an award of Plaintiff's unamortized construction and improvements to the Premises, in an amount to be determined at trial; and
- B. For such other and further relief as the Court deems just and appropriate.

**COUNT V**  
**CONSTRUCTIVE EVICTION (against Defendant, Trump Taj Mahal)**

122. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 121 of this Complaint.

123. Trump Taj Mahal has constructively evicted Plaintiff from the Premises because the closing of the Hotel and Casino has physically interfered with Plaintiff's use of the Premises, and the closure has effectively prohibited Plaintiff from operating its business.

124. Due to the closing of the Hotel and Casino, Plaintiff has been prohibited from operating its restaurant at the Premises since October 10, 2016, as explicitly contemplated by the Lease.

125. Trump Taj Mahal has rendered the Premises substantially unsuitable for the purpose for which the Premises was leased, *i.e.* operating a restaurant in conjunction with an operating casino, gaming enterprise and hotel.

126. This constructive eviction has seriously interfered with the beneficial enjoyment of the Premises, and is a breach of the express covenant of quiet enjoyment stated in the Lease. (Lease, Ex. A, § 38.)

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Trump Taj Mahal as to Count V, as follows:

- A. For an award of Plaintiff's security deposit which was paid in connection with Section 47 of the Lease, in the amount of \$10,500; and
- B. For such other and further relief as the Court deems just and appropriate.

**COUNT VI**  
**PIERCING THE CORPORATE VEIL/ALTER EGO THEORY**  
**(against Defendants, Icahn Enterprises and Trump Entertainment)**

127. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 126 of this Complaint.

128. Since Icahn Enterprises' acquisition of Trump Entertainment and Trump Taj Mahal, Trump Taj Mahal was merely an instrumentality of Icahn Enterprises' undertakings and activities.

129. Since Icahn Enterprises' acquisition of Trump Entertainment, Trump Taj Mahal has been dominated by its parent corporation, Icahn Enterprises.

130. Defendants used the subservient corporation, Trump Taj Mahal, to accomplish the injustice of breaking the Union and breaching the Lease.

131. After the Bankruptcy reorganization, it is clear that Icahn Enterprises used the corporate structure of Trump Taj Mahal merely as a sham, a dummy and alter ego, to perpetrate the unfairness of closing the Hotel and Casino, eliminating hundreds of local jobs, breaking the Union, and breaching the Lease in order to prevent further financial losses.

132. As admitted by Carl Icahn and Defendants, Trump Taj Mahal was inadequately capitalized following the acquisition on February 26, 2016, which led to the closure on October 10, 2016.


133. Upon information and belief, Trump Taj Mahal does not have sufficient assets to compensate Plaintiff for the damages that it has incurred, and will continue to incur throughout the Lease Term, resulting from the Defendants' breaches of the Lease, unjust enrichment and constructive eviction.

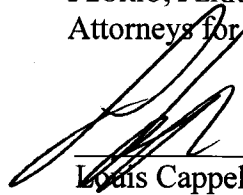
134. Accordingly, piercing the corporate veil of Icahn Enterprises and Trump Entertainment is necessary for Plaintiff to satisfy any judgment it is awarded against Trump Taj Mahal.

WHEREFORE, Plaintiff respectfully requests that the Court grant it equitable relief to pierce the corporate veil of Trump Taj Mahal, and enter liability and judgment against Icahn Enterprises and Trump Entertainment on Counts I, II, III, IV, and V of this Complaint, and for any other and further relief as the Court deems just and appropriate.

Respectfully Submitted,  
FLORIO, PERRUCCI, STEINHARDT & FADER, LLC  
Attorneys for Plaintiff

Dated: \_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_  
Louis Cappelli, Jr., Esq.



**NOTICE OF DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Louis Cappelli, Jr., Esq. and Cory C. Sidelsky, Esq. are hereby designated as trial counsel for Plaintiff in the within matter.

**CERTIFICATION PURSUANT TO R. 4:5-1**

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no other action or arbitration proceeding is contemplated. To the best of my knowledge and belief, no other party should be joined in this litigation.

**CERTIFICATION PURSUANT TO R. 1:38-7(b),(c)**


I hereby certify that all confidential personal identifies have been redacted from documents now submitted to the court, and I will redact all such personal identifies from all documents submitted in the future in accordance with R. 1:38-7(b),(c).

**FLORIO PERRUCCI STEINHARDT & FADER, LLC**

Dated:

2/11/17

By:

  
\_\_\_\_\_  
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